

**REMARKS/ARGUMENTS**

Claims 1-24 are pending in this application and presented for examination.

Reconsideration is respectfully requested.

Claims 1-2 and 7-12 were objected to as containing non-elected subjected matter. In response, Applicants respectfully traverse this objection. In Applicants' response dated July 28, 2004, Applicants elected a species for examination purposes, and the restriction requirement was traversed. In the present action, the Examiner has made this restriction requirement final. Applicants respectfully maintain their traversal for the reasons set forth below.

M.P.E.P § 809(c) makes clear the proper procedure after an election of species:

(B) When a generic claim is subsequently found to be allowable, and not more than a reasonable number of additional species are claimed, treatment shall be as follows: (1) When all claims to each of the additional species are embraced by an allowable generic claim as provided by 37 CFR 1.141, applicant must be advised of the allowable generic claim and that claims drawn to the nonelected species are no longer withdrawn since they are fully embraced by the allowed generic claim. [Emphasis added].

In the instant case, Applicants' generic claim has been found allowable, and not more than a reasonable number of additional species are being claimed. Therefore, the proper procedure is to rejoin all the withdrawn nonelected species. As such, Applicants respectfully request that the Examiner rejoin all the species within allowed claim 1.

To maintain the withdrawal of non-elected species is to improperly restrict a single claim (e.g., claim 1) into multiple inventions; this is directly contrary to controlling law. As the C.C.P.A. has stated:

As a general proposition, an applicant has a right to have each claim examined on the merits. If an applicant submits a number of claims, it may well be that pursuant to a proper restriction requirement, those claims will be dispersed to a number of applications. Such action would not affect the rights of the applicant eventually to have each of the claims examined in the form he considers to best define his invention. If, however, a single claim is required to be divided up and presented in several applications, that claim would never be considered on the merits.

The totality of the resulting fragmentary claims would not necessarily be the equivalent of the original claim. Further, since the subgenera would be defined by the examiner, rather than by the applicant, it is not inconceivable that a number of the fragments would not be described in the specification.

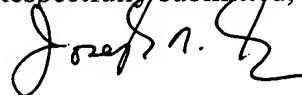
*See, In Re Weber, Soder and Boksay* 198 USPQ 328, 331 (C.C.P.A. 1978) (emphasis added).  
*See also, In Re Haas* 179 USPQ 623, 624, 625 (*In Re Haas I*) (C.C.P.A. 1973) and *In Re Haas* 198 USPQ 334-337 (*In Re Haas II*) (C.C.P.A. 1978).

Thus, to be consistent with the foregoing procedures and case law, Applicants respectfully request that the Examiner rejoin claim 1 and examine it on the merits. Moreover, as the product claims are now allowable, Applicants respectfully request that method claims be rejoined as a matter of right (*see*, MPEP § 821.04).

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,



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